

## CCRB INVESTIGATIVE RECOMMENDATION

|  |  |                               |   |                                    |  |
|--|--|-------------------------------|---|------------------------------------|--|
| Investigator:<br>Katherine Matejcak              | Team:<br>Squad #1                              | CCRB Case #:<br>201609337     | <input checked="" type="checkbox"/> Force             | <input type="checkbox"/> Discourt. | <input type="checkbox"/> U.S.              |
|  |  |                               | <input checked="" type="checkbox"/> Abuse             | <input type="checkbox"/> O.L.      | <input checked="" type="checkbox"/> Injury |
| Incident Date(s)<br>Tuesday, 11/08/2016 9:45 AM  | Location of Incident:<br>517 East 117th Street | Precinct:<br>25               | 18 Mo. SOL<br>5/8/2018                                | EO SOL<br>5/8/2018                 |  |
| Date/Time CV Reported<br>Wed, 11/09/2016 3:09 PM | CV Reported At:<br>Precinct                    | How CV Reported:<br>In-person | Date/Time Received at CCRB<br>Wed, 11/09/2016 3:09 PM |                                    |  |

| Complainant/Victim | Type | Home Address |
|--------------------|------|--------------|
|                    |      |              |

| Witness(es) | Home Address |
|-------------|--------------|
|             |              |
|             |              |

| Subject Officer(s)     | Shield | TaxID  | Command |
|------------------------|--------|--------|---------|
| 1. POF Lydia Figueroa  | 17881  | 945718 | 025 PCT |
| 2. POF Rosemary Flores | 31169  | 958595 | 025 PCT |

| Officer(s)            | Allegation   | Investigator Recommendation |
|-----------------------|--|-----------------------------|
| A.POF Lydia Figueroa  | Abuse: Police Officer Lydia Figueroa stopped § 87(2)(b)                                      |                             |
| B.POF Rosemary Flores | Abuse: Police Officer Rosemary Flores stopped § 87(2)(b)                                     |                             |
| C.POF Lydia Figueroa  | Abuse: Police Officer Lydia Figueroa interfered with § 87(2)(b)'s use of a recording device. |                             |
| D.POF Lydia Figueroa  | Force: Police Officer Lydia Figueroa used physical force against § 87(2)(b)                  |                             |
| E.POF Lydia Figueroa  | Abuse: Police Officer Lydia Figueroa detained § 87(2)(b)                                     |                             |

### Case Summary

On November 9, 2016, § 87(2)(b) filed this complaint in person at the 25<sup>th</sup> Precinct stationhouse [01 Board Review]. It was received by the CCRB on November 9, 2016.

On November 8, 2016 at approximately 9:45 a.m., § 87(2)(b) was in the checkout line at the Target store at 517 East 117<sup>th</sup> Street in Manhattan when she and a cashier argued about § 87(2)(b)'s purchases. § 87(2)(b) swung her hand at the cashier but did not make contact with her. In response, the cashier told members of the Target security team that § 87(2)(b) had hit her. A Target security guard then called 911 and reported that an assault had taken place at the store. § 87(2)(b) tried to exit the building but was stopped by two Target security guards before she could do so. These guards followed § 87(2)(b) around the store as they waited for the police to arrive. § 87(2)(b) took out her cell phone and recorded the security guards. As she was recording, PO Lydia Figueroa and PO Rosemary Flores of the 25<sup>th</sup> Precinct stopped her (**Allegations A and B**). PO Figueroa asked § 87(2)(b) to put her phone down. When § 87(2)(b) continued to record, PO Figueroa grabbed the phone out of her hands to stop her from recording (**Allegation C**). § 87(2)(b) was handcuffed. During the handcuffing process, PO Figueroa allegedly elbowed § 87(2)(b) (**Allegation D**). The officers then escorted § 87(2)(b) to a detention cell inside the store while they reviewed security video. The officers reviewed the video and determined that § 87(2)(b) was not guilty of assault. Before releasing § 87(2)(b) PO Figueroa reportedly approached her while she was still handcuffed inside the detention room and told her that she would have to sign a trespass notice for Target before being released or getting her cell phone back (**Allegation E**). Once § 87(2)(b) agreed to sign the form, she was taken out of handcuffs and given her cell phone back. She then exited the store without incident. § 87(2)(b) was not arrested or issued a summons as a result of this incident.

Cell phone video footage for this incident was obtained from § 87(2)(b) and surveillance footage was obtained from Target. The video from § 87(2)(b) is linked to IA #110 of the digital case file. The videos from Target are linked to IAs #110, 136, 137, and 138 of the digital case file.

### Mediation, Civil and Criminal Histories

- § 87(2)(b) rejected mediation for this case, § 87(2)(b).
- As of February 6, 2017, no Notice of Claim has been filed for this incident [02 Board Review].
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)] ].

### Civilian and Officer CCRB Histories

- This is § 87(2)(b)'s first CCRB complaint.
- PO Figueroa has been a member of the NYPD for 9 years. This is the sixth CCRB case filed against her. One case, #201110297, contained two substantiated force allegations in which it was found that PO Figueroa punched a civilian and struck him with an asp. The

Board recommended that the case be substantiated with charges, while the Department closed the case as DUP and took no disciplinary action. § 87(2)(g) [04 Board Review].

### Potential Issues

- During her CCRB interview, § 87(2)(b) allowed investigators to view video from the incident that she had recorded on her cell phone but refused to provide the CCRB with a copy. After consulting with her attorney, § 87(2)(b) agreed to send the recording to the CCRB. The DVD was received by the undersigned on December 13, 2016. This copy was a separate recording of § 87(2)(b)'s cell phone screen made with a different recording device and was of poor quality. It did not contain the sound from the original recording. The undersigned asked § 87(2)(b) to provide a copy with sound, which was ultimately received at the CCRB on January 18, 2017. This copy was another recording of a recording and the sound of the original video was difficult to hear over other background noise.

### Allegations Not Pleaded

- **Force – Physical Force:** In her initial CCRB complaint, § 87(2)(b) alleged that PO Figueroa snatched her cell phone out of her hand which resulted in bruises and a scratch. She also alleged that PO Figueroa and PO Flores “yanked” her arms behind her back. However, in her sworn statement, § 87(2)(b) stated that there was no struggle with her in order to confiscate her cell phone or place her in handcuffs and both were completed without incident. § 87(2)(g)

### Findings and Recommendations

**Allegation A – Abuse of Authority: Police Officer Lydia Figueroa stopped** § 87(2)(b)

**Allegation B – Abuse of Authority: Police Officer Rosemary Flores stopped** § 87(2)(b)

§ 87(2)(b) stated that she had a verbal dispute with a Target cashier. Although § 87(2)(b) admitted to cursing at the cashier, their argument did not escalate to the point of physical force. Target security guards followed § 87(2)(b) through the store and pointed her out to NYPD officers when they arrived on scene, prompting them to stop her.

§ 87(2)(b) is a plainclothes Target security guard who was present at the time. He explained that he did not witness the alleged assault but was alerted to the incident when he received an emergency alert over his radio. When he responded to the alert, he found a customer shouting at § 87(2)(b) and alleging that she hit a Target cashier. As a result, another Target security guard, § 87(2)(b) called 911.

§ 87(2)(b) did not witness the original incident. Like § 87(2)(b) he responded to the scene when he received an emergency alert over his radio. When § 87(2)(b) first arrived, § 87(2)(b)

was still arguing with the cashier. A customer told § 87(2)(b) that § 87(2)(b) had hit a cashier. § 87(2)(b) then called his boss for instructions on how to deal with the situation. His boss informed him that, since Target security had not witnessed the alleged assault, they could not take any action regarding § 87(2)(b) unless the victim of the alleged assault wanted to press charges. § 87(2)(b) asked the cashier if she wanted to file a police report and she said yes, so § 87(2)(b) called 911, explained that a customer had hit a cashier, and requested that officers respond. § 87(2)(b) stated that, when officers responded to the scene, he pointed § 87(2)(b) out to them.

The 911 audio regarding this incident confirms that § 87(2)(b) called 911, stated that a customer hit a cashier, and provided a physical description (black female, 50s, glasses, black durag, blue and white § 87(2)(b) jacket) of the alleged perpetrator.

PO Flores stated that she and PO Figueroa became involved in the incident when they responded to a call from Target reporting that a customer had assaulted an employee. When the officers entered the store, an unknown security guard stationed at the front entrance saw them and pointed out § 87(2)(b) and the security guards who were following her through the store. PO Flores stated that, once she and PO Figueroa approached the scene, a security guard informed them that § 87(2)(b) had assaulted an employee.

Similarly, PO Figueroa stated that she and PO Flores responded to a call for an assault in progress at Target. She stated that, prior to responding, all she knew was that the perpetrator was a female. PO Figueroa stated that, as soon as the officers entered the building, they noticed a woman screaming and being followed by two security guards. As PO Figueroa and PO Flores approached them, a security guard looked at the officers and pointed at § 87(2)(b). PO Figueroa stated that she asked the security guards what had happened and was told that § 87(2)(b) had assaulted a Target employee.

Surveillance video obtained from Target shows that § 87(2)(b) attempted to make physical contact with the Target employee. However, the employee used her arm to move § 87(2)(b)'s arm away. The video does not show § 87(2)(b) strike the employee at any point. Video sent by § 87(2)(b) shows the moment at which § 87(2)(b) points § 87(2)(b) out to someone out of the frame (presumably the officers). § 87(2)(b) matches the description provided in the 911 call.



IA #136, 31 seconds.mp4



IA 110, 56 seconds.mp4

An officer may stop an individual when they have reasonable suspicion that the individual has committed, is committing, or is about to commit a crime (People v. De Bour, 40 N.Y.2d 2010, 1976) [09 Board Review].

§ 87(2)(g)  
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§ 87(2)(g)

**Allegation C – Abuse of Authority: Police Officer Lydia Figueroa interfered with § 87(2)(b)'s use of a recording device.**

As discussed above, § 87(2)(b) was recording the incident with her cell phone when officers responded to the scene. § 87(2)(b) alleged that, seconds after arriving, PO Figueroa instructed her to put her cell phone down. § 87(2)(b) did not comply with this request, so PO Figueroa reached over and grabbed the phone out of § 87(2)(b)'s hand. PO Figueroa was in custody of the phone for the remainder of the incident, and § 87(2)(b) did not get her phone back until she was taken out of handcuffs and escorted out of the store.

Due to the background noise in the cell phone video provided by § 87(2)(b) no instructions are heard telling § 87(2)(b) to put the phone down and it is similarly unclear how or why the recording stops.

§ 87(2)(b) explained that the officers were responding to a 911 call made by Target security stating that § 87(2)(b) hit a Target employee during the aforementioned dispute. When officers arrived, § 87(2)(b) was recording the incident on her phone and accusing Target security guards of racially profiling her. Target security guards pointed § 87(2)(b) out to the officers and they approached her. PO Figueroa asked § 87(2)(b) to put her phone away two or three times, but § 87(2)(b) did not comply or respond. PO Figueroa then reached over to grab § 87(2)(b)'s cell phone out of her hand. § 87(2)(b) jerked her hand away and said “Don’t grab my phone,” to which PO Figueroa responded “I’m going to put you in handcuffs if you don’t give me the phone.” PO Figueroa then reached over again and grabbed § 87(2)(b)'s cell phone out of her hands. The phone remained in police possession until the conclusion of the incident.

§ 87(2)(b) is the Target security guard who called 911 to report that § 87(2)(b) had assaulted a Target employee. He stated that, when officers arrived on scene, he pointed § 87(2)(b) out to them. § 87(2)(b) stated that, when officers approached, he told § 87(2)(b) that Target has a policy that forbids recording video inside the store. PO Figueroa reportedly looked at § 87(2)(b) and nodded before asking § 87(2)(b) to put her phone down. § 87(2)(b) stated that § 87(2)(b) ignored PO Figueroa’s requests but did not do or say anything else to resist police action. In total, PO Figueroa asked that § 87(2)(b) put her phone away three or four times before she reached over and grabbed the phone out of § 87(2)(b)'s hands. PO Figueroa handed the phone to PO Flores, and it was not returned to § 87(2)(b) until the conclusion of the incident.

PO Flores stated that she and PO Figueroa responded to an assault in progress at Target. When they entered the store, a security guard approached them and said “They’re over there,” directing the officers’ attention to a woman shouting into her phone and being followed by two security guards. PO Flores described § 87(2)(b)'s initial tone and demeanor as “irate” because, in

addition to shouting, she was reportedly flailing her arms as if to resist the security guards' attempts to restrain her or calm her down. PO Flores stated that no one on scene ever mentioned a Target policy regarding in-store recordings. Regardless, as soon as the officers neared § 87(2)(b) PO Figueroa asked her to put her phone down at least twice. § 87(2)(b) reportedly said no and continued to record. PO Flores stated that she did not recall whether PO Figueroa told § 87(2)(b) why she could not record. As this exchange went on, PO Flores determined that § 87(2)(b) needed to be handcuffed for safety purposes. She made this determination because § 87(2)(b) would not stop shouting and because, at that point, PO Flores believed that § 87(2)(b) had just assaulted a Target employee. There were no other factors that caused PO Flores to fear for her safety. Without discussing the issue with PO Figueroa, PO Flores approached § 87(2)(b) from behind and handcuffed her left wrist. § 87(2)(b) did not respond to this action and did not physically resist. PO Figueroa then grabbed § 87(2)(b)'s cell phone out of her right hand and held onto it. PO Flores stated that § 87(2)(b) let go of the phone as soon as PO Figueroa grabbed it and there was no struggle involved. Although PO Flores never discussed the matter with PO Figueroa, she assumed that PO Figueroa took the cell phone to assist with the handcuffing process. § 87(2)(b)'s cell phone was not returned to her until the conclusion of the incident.

PO Figueroa also noted that she and PO Flores responded to an assault in progress at Target. When they entered the store, they immediately noticed a woman shouting while being followed by two security guards. This woman was recording the incident with her cell phone. When they approached, a security guard pointed at § 87(2)(b) and explained that she had assaulted a Target employee. Based on this information, PO Figueroa's intention at the time was to arrest § 87(2)(b). She then approached § 87(2)(b) and grabbed the cell phone out of her hands without any struggle and without using any force. § 87(2)(b) was then handcuffed. PO Figueroa did not recall whether she asked § 87(2)(b) to put her phone down before she confiscated it. PO Figueroa stated that she took this action exclusively for her own safety because she did not feel comfortable standing near § 87(2)(b) when she was carrying an object that could be used as a weapon. She stated that she never spoke with any Target employees about whether the store had a policy forbidding in-store recording. The cell phone was not returned to § 87(2)(b) until the conclusion of the incident.

According to Patrol Guide 212-49 and reiterated in Finest Message #9881632, members of the public are allowed to record police activity including arrests. However, this recording may not interfere with police operations [08, 05 Board Review].

§ 87(2)(g)  
[REDACTED]

**Allegation D – Force: Police Officer Lydia Figueroa used physical force against § 87(2)(b)**

§ 87(2)(b) alleged that PO Figueroa elbowed her in her ribcage before placing her in handcuffs. She did not make this allegation in her initial complaint or phone statement. § 87(2)(b) stated that the only injury that she sustained during the incident was some redness and irritation to her wrists from the handcuffs and that she did not physically resist police action at any point.

§ 87(2)(b) stated § 87(2)(b) was handcuffed without incident and that he never saw any officer elbow § 87(2)(b) or use any type of force against her.

§ 87(2)(b) testified that, immediately after confiscating the cell phone, PO Figueroa pulled § 87(2)(b)'s arm towards her in a “forceful” manner. Aside from pulling her arm towards her, PO Figueroa did not use any force against § 87(2)(b) during the incident, and she did not resist being handcuffed. § 87(2)(b) stated that he did not see any officer elbow § 87(2)(b).

PO Flores stated that § 87(2)(b) was handcuffed without any struggle. § 87(2)(g) PO Flores stated that she was the one who handcuffed § 87(2)(b). Regardless, PO Flores stated that neither she nor PO Figueroa ever elbowed § 87(2)(b) or used any other type of force against her.

PO Figueroa stated that she was fairly certain that PO Flores handcuffed § 87(2)(b). PO Figueroa did not believe that she had assisted in this process. PO Figueroa stated that § 87(2)(b) did not physically resist being handcuffed in any way and that neither she nor PO Flores elbowed her during this process. PO Figueroa never heard any complaints that an officer had used force against § 87(2)(b).

Neither § 87(2)(b)'s video nor the surveillance video obtained from Target showed § 87(2)(b) being handcuffed.

§ 87(2)(g)  
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§ 87(2)(g).

**Allegation E – Abuse of Authority: Police Officer Lydia Figueroa detained § 87(2)(b)**

After § 87(2)(b) was handcuffed, she was escorted to a detention cell inside the store. § 87(2)(b) was placed inside this room while still in handcuffs as PO Figueroa, PO Flores, and

several Target security guards reviewed the store's security footage in the adjacent room. § 87(2)(b) never learned why she was being detained or what the officers were looking for on video. After approximately 20 minutes, the officers handed § 87(2)(b) a trespass notice and told her not to return to that Target location. § 87(2)(b) initially refused to sign the form, requesting that her cell phone be returned first. PO Figueroa allegedly told § 87(2)(b) that they would not give her cell phone back until she signed the forms. § 87(2)(b) signed the form and the officers returned her cell phone and told her that she was free to leave.

§ 87(2)(b) stated that, once § 87(2)(b) was placed inside the detention cell, he, his coworkers, and the officers reviewed Target security footage to determine whether § 87(2)(b) was guilty of assault. The video showed that § 87(2)(b) never struck the cashier. After reviewing the video, § 87(2)(b) decided that he still wanted § 87(2)(b) to sign a Target trespass notice stating that she may not return to the Harlem Target for one year. After § 87(2)(b) informed the officers that he wanted § 87(2)(b) to sign this form, PO Figueroa reportedly told § 87(2)(b) that she would not be allowed to leave the detention cell until she signed it. § 87(2)(b) stated that § 87(2)(b) then agreed to sign the form, so officers removed her handcuffs and returned her cell phone.

§ 87(2)(b) agreed that the security video made it clear that § 87(2)(b) was not guilty of assault. According to his account of events, Target security then presented § 87(2)(b) with the trespass notice and asked her to sign it. At first, § 87(2)(b) was unwilling to sign the form. Target employees explained that the form could be "administered verbally," meaning that § 87(2)(b) could be told that she would be considered to be trespassing if she returned to the store within one year in lieu of signing a form acknowledging that she understood this. After this was explained to § 87(2)(b) PO Figueroa told her "The sooner you sign this, the sooner you'll get out of here." At that point, § 87(2)(b) agreed to sign the form. Once she agreed to sign it, officers removed her handcuffs, handed her the form, and returned her cell phone. § 87(2)(b) did not recall hearing any officer tell § 87(2)(b) that she would not be allowed to leave or have her cell phone back until she signed the form.

PO Flores also stated that the video made it clear that § 87(2)(b)'s dispute with the Target cashier never escalated to a physical fight. PO Flores stated that this was clear to everyone in the room and that there was no debate about whether § 87(2)(b) was guilty of assault. After viewing the video, PO Flores determined that § 87(2)(b) had not committed any offenses for which she could have been arrested or issued a summons. One security guard stated that he wanted § 87(2)(b) to sign a trespass notice. This security guard approached the detention cell, told § 87(2)(b) what the form was for, and asked her to sign it. § 87(2)(b) refused, stating that it was inappropriate and unfair. At some point, PO Figueroa approached § 87(2)(b) and tried to convince her to sign the form. After approximately two minutes, § 87(2)(b) agreed to do so. PO Flores did not recall if anyone ever told § 87(2)(b) that she could not leave, get her cell phone back, or be taken out of handcuffs until she signed the form. PO Flores stated that § 87(2)(b)'s handcuffs were removed before she agreed to sign the form, although she could not state precisely when this occurred. Once § 87(2)(b) signed the form, she exited the detention cell and left the store without incident.



After viewing video obtained from Target, PO Flores added that PO Figueroa showed § 87(2)(b) the trespass notice and said “You have to sign this.” PO Flores stated that members of the Target security team told § 87(2)(b) what would happen if she did not sign the form but did not recall what they told her. PO Flores did not recall if PO Figueroa ever told § 87(2)(b) what the consequences would be if she refused to sign. PO Flores also amended her initial testimony and stated that PO Figueroa removed § 87(2)(b)'s handcuffs after § 87(2)(b) agreed to sign the form. Despite this sequence of events, PO Flores stated that § 87(2)(b)'s release from handcuffs was not contingent upon her agreeing to sign the trespass notice. PO Flores stated that the video appeared to show PO Figueroa blocking § 87(2)(b)'s attempt to exit the detention cell with the form in hand, but she explained that this was probably because a Target security guard requested that § 87(2)(b) sign the form while still inside the detention cell. PO Flores did not know why a security guard would have requested this. However, she added that § 87(2)(b) had become more agitated throughout the course of the incident and was yelling at officers at the time.

PO Figueroa testified that, once § 87(2)(b) was placed inside the detention cell, she left the room to speak with the victim of the alleged assault. The victim told PO Figueroa that § 87(2)(b) hit her and that she wanted to press charges. PO Figueroa then returned to PO Flores and the security guards to view the video. PO Figueroa stated that the video made it immediately clear that the most § 87(2)(b) was guilty of was harassment, and that she had not committed any offenses that would justify an arrest. After viewing the video, a Target security guard mentioned that they wanted § 87(2)(b) to sign a trespass notice. PO Figueroa stated that she was the first person to approach § 87(2)(b) to explain what the trespass notice was to her, and that she did so while § 87(2)(b) was still in handcuffs inside the detention cell. PO Figueroa stated that, while § 87(2)(b) did not initially want to sign the form, the two of them discussed the matter for two minutes and she changed her mind. PO Figueroa stated that § 87(2)(b) raised her voice during this discussion but that she did not present a particular safety concern while she was inside the detention cell. After § 87(2)(b) agreed to sign the form, PO Figueroa removed her handcuffs. PO Figueroa explained that she did not remove § 87(2)(b)'s handcuffs immediately after determining that she was not guilty of assault because she wanted her to remain in a contained area if she was going to be given a pen in order to sign the form. PO Figueroa stated that Target security staff never requested that § 87(2)(b) remain in handcuffs or inside the detention cell. PO Figueroa stated that § 87(2)(b) was in handcuffs for between 5 and 10 minutes after officers determined that she was not guilty of assault. She added that neither she nor PO Flores ever told § 87(2)(b) that she could not leave, would not be taken out of handcuffs, or would not get her cell phone back until she signed the form.

After viewing video obtained from Target, PO Figueroa stated that § 87(2)(b) initially refused to sign the trespass notice until officers removed her handcuffs. PO Figueroa added that she blocked § 87(2)(b) from exiting the detention cell because she did not want her to have a pen in an open area exclusively for safety purposes. PO Figueroa stated that § 87(2)(b) never did anything to indicate that she wanted to use the pen as a weapon and that she asked her to remain in the room as a general safety precaution. PO Figueroa stated that she instructed § 87(2)(b) to remain inside the room until she signed the form. PO Figueroa stated that, at the point when § 87(2)(b) was allowed to exit the detention cell, she no longer presented a safety concern.

Finally, the aforementioned video obtained from Target's booking room (where officers reviewed the video) and detention cell shows that officers finished viewing the security video and determined that § 87(2)(b) was not guilty of assault at approximately 9:47 a.m. § 87(2)(b) was taken out of handcuffs by PO Figueroa at 9:52 a.m. and allowed to leave the detention cell at 9:53 a.m. after signing the trespass notice.



IA 137, 1 minute 13 seconds.mp4



IA #138, 55 seconds.mp4

*United States v. Sharpe* established that, following a lawful stop, the police may place a suspect under temporary investigative detention. *United States v. Sharpe*, 470 U.S. 675 (1985) [06 Board Review]. The purpose of such a detention is to obtain further information regarding the criminal activity for which the detained individual is suspected.

§ 87(2)(g)  
[REDACTED]

§ 87(2)(g) during the course of the six minutes between when officers determined that § 87(2)(b) was no longer under consideration for arrest and when she was ultimately released from the holding cell, § 87(2)(b)'s detention became unrelated to any investigation. According to the testimonies of § 87(2)(b) PO Flores, and PO Figueroa, officers kept § 87(2)(b) in handcuffs and subsequently inside the detention cell for the sole purpose of having her sign a company trespass notice. § 87(2)(g)

[REDACTED]

§ 87(2)(g)  
[REDACTED]

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Squad: 1

Investigator: \_\_\_\_\_  
Signature Print Date

Squad Leader: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
Title/Signature Print Date